

CITY ATTORNEY
2010 AUG 26 PM 12:13

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Attorneys for Plaintiff
WILLIAM TAYLOR

UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Wiley,
Judge, Dept. "50"]

1) OPPOSITION TO DEFENDANT
CITY OF BURBANK'S REQUEST FOR
A NEW HEARING ON PLAINTIFF'S
PREVIOUSLY GRANTED PITCHESS
MOTION BASED ON SUGGESTIVE
PALMA NOTICE; AND

2) PLAINTIFF'S BRIEF ON THE
APPROPRIATE RESPONSE BY THIS
COURT TO THE SUGGESTIVE PALMA
NOTICE

DECLARATION OF CHRISTOPHER
BRIZZOLARA

Date: September 8, 2010

Time: 8:30 a.m.

Dept.: 50

Action Filed: 9/22/09

**OPPOSITION TO DEFENDANT CITY OF BURBANK'S REQUEST FOR A NEW HEARING
ON PLAINTIFF'S PREVIOUSLY GRANTED PITCHESS MOTION BASED ON SUGGESTIVE
PALMA NOTICE ETC.**

2/25

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE
2 CITY OF BURBANK:

3 PLEASE TAKE NOTICE that plaintiff William Taylor hereby presents the following
4 opposition to Defendant City of Burbank's Request for a New Hearing on Plaintiff's Previously
5 Granted Pitchess Motion Based on Suggestive Palma Notice, and Plaintiff's Brief on the
6 Appropriate Response by this Court to the Suggestive Palma Notice.
7

8 **I. STATEMENT OF FACTS**

9 On March 5, 2010, plaintiff filed and served a Pitchess motion to compel the production of
10 personnel and other records regarding the Internal Affairs Investigations file numbers specified
11 in the motion. On July 12, 2010, the Court granted plaintiff's Pitchess motion to compel the
12 production of personnel and other records regarding the Internal Affairs Investigations file
13 numbers specified in the motion. (Ex. "A"). Thereafter, on or about July 23, 2010, the defendant
14 City of Burbank filed a Petition for Writ of Mandate, Writ of Prohibition, or Other Appropriate
15 Relief. On or about August 4, 2010, the Court of Appeal, Second Appellate District, issued a
16 Notice of Intent to Grant Peremptory Writ of Mandate in the First Instance (*Palma* notice).
17 (Ex. "B")

18 In said notice, the Court of Appeal notified the parties that it was considering the issuance
19 of a peremptory writ of mandate in the first instance unless this Court agreed to: (1) delay
20 production of the requested personnel records pending notice by petitioner City of Burbank to the
21 peace officers whose records are a part of Internal Affairs Investigation file numbers specified by
22 plaintiff in the motion granted by this Court on July 12, 2010; and (2) conduct an in camera
23 inspection of the subject files prior to production.
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1 **II. THE PALMA NOTICE AT ISSUE IS A "SUGGESTIVE PALMA NOTICE"**

2 In this *Palma* notice, the Court of Appeal specifically cited this Court to the case of *Brown,*
3 *Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233. A review of this case is
4 instructive as to the intent of the suggestive *Palma* notice issued by the Court of Appeal regarding
5 this matter.

6 In the *Brown, Winfield & Canzoneri, Inc.* case, the California Supreme Court considered
7 an action in which, as here, the Court of Appeal had issued a suggestive *Palma* notice, stating its
8 intention to issue a peremptory writ of mandate in the first instance, and directing the trial court
9 to reinstate a stay pending resolution of an underlying case, and providing a schedule for briefing
10 to be followed if the trial court failed to comply with the directive. When the trial court reinstated
11 the stay, and the Court of Appeal dismissed the writ petition.

12 The Supreme Court affirmed the judgment of the Court of Appeal dismissing the writ
13 proceeding. The court held that it is not improper for an appellate court to issue a suggestive
14 *Palma* notice and that the appellate court may do so without first having received or solicited
15 opposition from the real party in interest. Although a suggestive *Palma* notice may be styled as
16 an order, such a notice in no way commands or otherwise obligates the lower court to follow the
17 course of action suggested by the appellate court. Rather, a suggestive *Palma* notice sets forth
18 the appellate court's preliminary conclusions that are not binding on either the trial court or the
19 appellate court. However, if a trial court decides on its own motion to revisit its interim ruling in
20 response to a suggestive *Palma* notice, that court must inform the parties of its intent to do so and
21 provide them with an opportunity to be heard.

22 Here, the Court of Appeal issued a similar suggestive *Palma* notice indicating that this
23 Court should: (1) delay production of the requested personnel records pending notice by
24 petitioner City of Burbank to the peace officers whose records are a part of Internal Affairs
25

1 Investigation file numbers specified by plaintiff; and (2) conduct an in camera inspection of the
2 subject files prior to production. Nowhere in its suggestive *Palma* notice does the Court of Appeal
3 indicate in any manner that this Court should revisit its previous finding that good cause existed
4 to grant plaintiff's Pitchess motion. Instead, the Court of Appeal merely advised this Court that:
5 (1) it should assure that defendant City of Burbank has provided notice to the peace officers
6 whose records are a part of Internal Affairs Investigation file numbers specified by plaintiff, which
7 the defendant had and has an obligation to do pursuant to *Evidence Code* Section 1043(a); and
8 (2) conduct an in camera inspection of the subject files prior to production.
9

10 **III. THE COURT OF APPEAL HAS SPECIFICALLY NOT ORDERED A NEW HEARING**
11 **REGARDING THE MERITS OF PLAINTIFF'S PITCHESS MOTION, OR THE ISSUE OF**
12 **GOOD CAUSE IN REGARD TO THE DOCUMENTS ORDERED TO BE PRODUCED**

13 Defendant misconstrues this suggestive *Palma* notice by making an unfounded claim the
14 Court of Appeal has ordered that this Court conduct a new hearing regarding the substantive
15 issue of whether plaintiff established good cause for the production of the personnel records of
16 the officers at issue. Had the Court of Appeal intended this Court to conduct a new hearing on
17 the issue of good cause, it would have explicitly ordered the Court to do so. Indeed, the
18 declaration and exhibits relied upon plaintiff in establishing such good cause, and which supported
19 this Court's finding that good cause existed to grant plaintiff's Pitchess motion, and defendant's
20 alleged evidence and arguments in opposition to the good cause issue, were before the Court of
21 Appeal as part of the appendix submitted with defendant's writ petition. The Court of Appeal has
22 not ordered such a hearing regarding good cause, and nothing in its suggestive *Palma* notice
23 indicates that the Court of Appeal desires this Court to hold such a hearing.
24

25 Indeed, a common sense reading of the suggestive *Palma* notice at issue indicates exactly
26 the opposite. The Court of Appeal specifically states in its *Palma* notice that: **"If the respondent**
27 **court exercises its discretion to reconsider and modify its order, and/or to conduct a new**
28

1 **hearing on the issue** as specified in *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010)
2 47 Cal.4th 1233, notice of the respondent court's order should immediately be forwarded to this
3 court by petitioner." (Emphasis added.)

4 The only "issues" specified in the suggestive *Palma* notice are that this Court should: (1)
5 delay production of the requested personnel records pending notice by petitioner City of Burbank
6 to the peace officers whose records are a part of Internal Affairs Investigation file numbers
7 specified by plaintiff; and (2) conduct an in camera inspection of the subject files prior to
8 production. Nowhere in the suggestive *Palma* notice does the Court of Appeal indicate there is
9 any "issue" to be reconsidered, modified, or conduct a new hearing on regarding the Court's
10 previous finding that good cause existed to grant plaintiff's Pitchess motion.

12 *Evidence Code* Sections 1043 and 1045 of the *Evidence Code* establish a two-step
13 procedure for discovery of peace officer personnel records. First, *Evidence Code* Section 1043
14 requires the party requesting the records file, as plaintiff did here, a written motion for discovery
15 of peace officer personnel records. *Evidence Code* § 1043(b)(2). Notice must be given to the
16 governmental agency (which plaintiff did in connection with the motion at issue), which
17 governmental agency in turn must give notice to the person whose records are sought. *Evidence*
18 *Code* § 1043(a) - which explains why the Court of Appeal has suggested that this Court assure
19 that defendant City of Burbank has provided the notice it is statutorily required to provide to the
20 peace officers whose records are being sought.

22 The second step is reached after the party seeking the records has made a showing of
23 good cause for the discovery. *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 83.

25 "Evidence Code section 1045 specifies that once the moving party has made a showing
26 of good cause for disclosure of peace officer personnel records, the trial court proceeds
27 to an in chambers examination of the records to determine whether they have any
relevance to the issues presented in the current proceedings." (*City of San Jose v.*
Superior Court (1998) 67 Cal.App.4th 1135, 1143.)

1 Here, all the Court of Appeal has suggested that this Court to do at this juncture is to follow
2 the procedure outlined in *Evidence Code* Section 1045 and conduct an in camera examination
3 of the records requested in plaintiff's Pitchess motion and determine whether they have any
4 relevance to the current proceeding. In this regard, it should be noted that *Evidence Code*
5 §1045(a) provides as follows:

6
7 **"(a) Nothing in this article shall be construed to affect the right of access to**
8 **records of complaints, or investigations of complaints, or discipline imposed as a**
9 **result of such investigations, concerning an event or transaction in which the peace**
10 **officer participated, or which he perceived, and the manner in which he performed**
11 **his duties, provided that such information is relevant to the subject matter involved**
12 **in the pending litigation. (Emphasis added)**

13 This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386,
14 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not limited to facts
15 that may be admissible at trial, but may include facts that could lead to the discovery of admissible
16 evidence. *People v. Memro* (1985) 38 Cal.3d 658, 681-682; *People v. Hustead* (1999) 74
17 Cal.App.4th 410, 423. There is no doubt the records requested in the plaintiff's Pitchess motion
18 at issue are relevant, and defendant has not set forth any evidence to the contrary.

19 The Court of Appeal's suggestion impliedly and/or expressly demonstrates that the Court
20 of Appeal agrees with the previous finding of this Court that plaintiff demonstrated good cause for
21 the production of the records for in camera inspection by this Court, and therefore satisfied step
22 one of the Pitchess process. If the Court of Appeal did not believe that plaintiff had satisfied step
23 one of showing good cause, or that this Court was in error in so finding, then there would be no
24 reason for the Court of Appeal to suggest that this Court review the documents requested in
25 camera.

26 Indeed, defendant's arguments on this issue make no logical sense. If the Court of Appeal
27 believed in any manner that good cause did not exist on the record presented for granting
28

1 plaintiff's Pitchess motion, it would not have indicated to this Court that the Court should conduct
2 an in camera inspection of the subject files prior to production. Instead, the Court of Appeal would
3 have simply advised this Court that no in camera inspection was necessary on the basis that
4 plaintiff had failed to establish good cause for such inspection in the first instance. Plaintiff
5 asserts that the Court of Appeal has impliedly and/or expressly found that plaintiff established
6 good cause for the in camera inspection by this Court and production of the documents and other
7 items relevant to this action, or the Court of Appeal would not have suggested to this Court to
8 modify its previous order and hold an in camera inspection of the documents and other items at
9 issue in order to determine which relevant documents and other items should be produced to
10 plaintiff.
11

12 Further, there would also be no need for the Court of Appeal to indicate to this Court that
13 the defendant City of Burbank provide notice to the peace officers whose records are a part of
14 Internal Affairs Investigation file numbers specified by plaintiff if the Court of Appeal had believed
15 that plaintiff had failed to show good cause for the in camera inspection and production of the
16 documents and other items at issue. Indeed, exactly the opposite is true. No such notice would
17 be required to be provided to any of the involved peace officers since none of their records would
18 be subject to in camera inspection and review.
19

20 **IV. THE DEFENDANT HAD A STATUTORY OBLIGATION PURSUANT TO EVIDENCE**
21 **SECTION 1043(a) TO IMMEDIATELY NOTIFY THE PEACE OFFICERS WHOSE**
22 **RECORDS ARE SOUGHT BY PLAINTIFF'S PITCHESS MOTION NEARLY SIX MONTHS**
23 **AGO**

24 On or about March 5, 2010, the City of Burbank and the Burbank Police Department were
25 served with plaintiff's Pitchess motion specifically identifying the Burbank Police Department
26 internal affairs files which are the subject of the motion. Defendant and its police department had
27 access to and are and/or should have been fully aware for nearly six months of the identities of
28

1 the peace officers whose records are a part of the requested internal affairs files, and has had
2 nearly six months to provide such officers with notice of plaintiff's Pitchess motion, which
3 defendant was obligated to do pursuant to *Evidence Code* Section 1043(a), which provides as
4 follows:

5 "In any case in which discovery or disclosure is sought of peace or custodial officer
6 personnel records or records maintained pursuant to Section 832.5 of the Penal Code or
7 information from those records, the party seeking the discovery or disclosure shall file a
8 written motion with the appropriate court or administrative body upon written notice to the
9 governmental agency which has custody and control of the records. The written notice
10 shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of
11 Civil Procedure. **Upon receipt of the notice the governmental agency served shall
12 immediately notify the individual whose records are sought.**" (Emphasis added.)

13 Here, defendant had a statutory obligation to "immediately notify" the individual(s) whose
14 records were sought by the plaintiff's Pitchess motion. Any failure by defendant to comply with
15 its statutory obligation should not be utilized to further delay this Court's in camera inspection and
16 production to plaintiff of the relevant documents and other items sought in plaintiff's Pitchess
17 motion.

18 **V. PLAINTIFF'S SUGGESTED RESPONSE TO SUGGESTIVE PALMA NOTICE**

19 Thus, plaintiff asserts that the response of this Court to the Court of Appeal's suggestive
20 *Palma* notice is simple and straightforward. First, this Court should set an Order to Show Cause
21 requiring defendant to confirm whether or not it has provided notice of plaintiff's Pitchess motion
22 to the individuals whose records are sought, and if not, why not, as defendant was required to
23 "immediately" do so upon being served with the Pitchess motion. Second, to the extent that
24 defendant has failed to fulfill its statutory obligation to have immediately provided such notice,
25 defendant should be ordered to immediately provide such notice now, and to immediately advise
26 the Court it has done so. Third, once the defendant has confirmed that it has complied with its
27 statutory duty to provide such notice, the Court should hold forthwith an in camera inspection of

1 the documents previously ordered to be produced to plaintiff, enter an order specifying which of
2 the documents and other items reviewed in camera should be produced to plaintiff, and order the
3 production of such documents and other items to plaintiff forthwith.

4 Defendant conspicuously omits from its motion any citation to its statutory duty that it
5 "immediately notify" the peace officers whose records are sought by the instant motion, or any
6 explanation why defendant did not do so six months ago when the Pitchess motion was served
7 upon defendant. It is completely unfair and prejudicial to plaintiff to set a new hearing date on
8 plaintiff's Pitchess motion. Plaintiff has already had to wait for over four months to have a hearing
9 on plaintiff's Pitchess motion. Any peace officers whose records are the subject of the motion had
10 abundant time to file whatever oppositions they believed appropriate or necessary in regard to the
11 motion. No officers opposed the motion, and defendant's opposition to the motion was
12 considered and rejected by this Court.

14 Defendant now makes the even more unfounded and prejudicial request that the peace
15 officers whose records are being sought be allowed to file "declarations and/or briefs under seal
16 without serving same on plaintiff", for which defendant cites no authority. There is no authority
17 supporting that a peace officer whose records are sought via a Pitchess motion be allowed to "file
18 declarations and briefs under seal" without serving same on the party filing the Pitchess motion.
19 To allow such a procedure would turn this proceeding into a virtual "star chamber" and deny
20 plaintiff his constitutional and statutory rights of notice and due process of law. Defendant's
21 request that anyone be allowed to file any declarations or briefs in this matter without serving
22 same on counsel for plaintiff should be rejected out of hand.

24 Indeed, defendant's current position is in direct contradiction to its previous position in this
25 matter. Defendant previously argued that plaintiff's motion should be denied on the alleged basis
26 that plaintiff had failed to identify in the Pitchess motion the names of the peace officers whose
27

1 records were being sought. Now that this Court (and impliedly the Court of Appeal in indicating
2 to this Court that it assure defendant itself has given notice to the peace officers at issue) has
3 rejected defendant's contention, defendant has done an about face 180 degree change in its
4 position and claims that all of the names of these peace officers should not be set forth on the
5 record in connection with this Pitchess motion.

6
7 Obviously, if the Court simply conducts an in camera review of the documents at issue, and
8 orders the production of the relevant documents and other items to plaintiff subject to an
9 appropriate protective order, there will be no need for the name of any officer to appear in any
10 declaration or brief in this matter. Instead, the documents containing the identities of such peace
11 officers will be under protective order, and the use of same limited to the parties and the litigation
12 of this action. Such protective order can include, when necessary, the filing of documents under
13 seal or with appropriate redactions if necessary. Plaintiff has attached hereto a protective order
14 regarding Pitchess materials ordered produced in another case by Los Angeles Superior Court
15 James Dunn (Ex. "C"), which this Court can adapt for use in this case to properly protect the
16 alleged privacy rights of any of the peace officers whose records are produced in response to
17 plaintiff's Pitchess motion.

18 19 **VI. CONCLUSION**

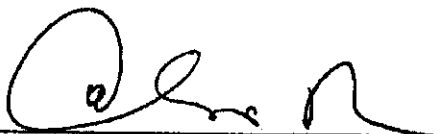
20 Wherefore, plaintiff requests this Court to:

- 21 1) compel defendant City of Burbank to confirm in writing that defendant has given notice to
22 the peace officers whose records are a part of the Internal Affairs Investigation file numbers
23 specified by plaintiff in plaintiff's motion heard on July 12, 2010 and/or for an order compelling
24 defendant City of Burbank to provide such notice forthwith;
- 25 2) schedule a date and time conduct an in camera inspection of the documents ordered to
26 be produced by defendant City of Burbank pursuant to the court's order of July 12, 2010.
27

1 Dated:

8/24/10

2
3 By:



Gregory W. Smith
Christopher Brizzolara
Attorneys for Plaintiff

14

1 **DECLARATION OF CHRISTOPHER BRIZZOLARA**

2 I, Christopher Brizzolara, do declare as follows:

3 1. I am an attorney at law licensed to practice in the State of California and one of the
4 counsel of record for plaintiff herein.

5 2. On or about March 5, 2010, plaintiff served the Pitchess motion at issue on defendant. On
6 July 12, 2010, the Court granted plaintiff's motion to compel the production of personnel and other
7 records regarding the Internal Affairs Investigations file numbers specified in the motion. A true
8 and correct copy of the Court's minute order regarding that matter is submitted herewith as Ex.
9 "A".

10 3. Thereafter, on or about July 23, 2010, the defendant City of Burbank filed a Petition for Writ
11 of Mandate, Writ of Prohibition, or Other Appropriate Relief. On or about August 4, 2010, the
12 Court of Appeal, Second Appellate District, issued a Notice of Intent to Grant Peremptory Writ of
13 Mandate in the First Instance. A true and correct copy of this notice is submitted herewith as Ex.
14 Ex. "B". In said notice, the Court of Appeal notified the parties that it considering the issuance of
15 a peremptory writ of mandate in the first instance directing this Court to: (1) delay production of
16 the requested personnel records pending notice by petitioner City of Burbank to the peace officers
17 whose records are a part of Internal Affairs Investigation file numbers specified by plaintiff in the
18 motion granted by this Court on July 12, 2010; and (2) conduct an in camera inspection of the
19 subject files prior to production.

20 4. Submitted herewith as Ex. "C" is a true and correct copy of a protective order issued by
21 Los Angeles County Superior Court Judge James Dunn regarding peace officer personnel
22 produced pursuant to Pitchess motion in another recent case, which this Court can adapt for use
23 in this case to properly protect the alleged privacy rights of any of the peace officers whose
24 records are produced in response to plaintiff's Pitchess motion.

1 5. We respectfully request this Court to respond to the Court of Appeal's *Palma* notice by:

2 a) denying defendant's unfounded request for a new hearing regarding the substance of
3 plaintiff's prior Pitchess motion, including the substantive issue of good cause;

4 b) compelling defendant City of Burbank to confirm in writing that defendant has given notice
5 to the peace officers whose records are a part of the Internal Affairs Investigation file numbers
6 specified by plaintiff in plaintiff's motion heard on July 12, 2010 and/or for an order compelling
7 defendant City of Burbank to provide such notice forthwith; and
8

9 c) scheduling a date and time conduct an in camera inspection of the documents ordered to
10 be produced by defendant City of Burbank pursuant to the court's order of July 12, 2010.

11 6. We assert that such orders will moot the Court of Appeal's Notice of Intent to Grant
12 Peremptory Writ of Mandate in the first instance, and will also serve to move this matter forward
13 so that the documents which the Court orders to be produced following the Court's in camera
14 inspection of same can be produced to us forthwith, and we can proceed with the further
15 prosecution of this action without further delay.
16

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed this 24th day of August, 2010, at Santa Monica, California.

20
21 

22 CHRISTOPHER BRIZZOLARA
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EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/12/10

DEPT. 50

HONORABLE JOHN SHEPARD WILEY JR

JUDGE

M. MATA

DEPUTY CLERK

HONORABLE
#12

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. BIVINS, CA

Deputy Sheriff

L. NISHIMOTO (CSR 9147)

Reporter

8:31 am

BC422252

WILLIAM TAYLOR
VS
CITY OF BURBANK

RECUSAL-GREEN
170.6-ROLF M. TREU

Plaintiff GREGORY SMITH (X)

Counsel CHRIS BRIZZOLARA (X)

Defendant KRISTIN A. PELLETIER (X)

Counsel LISA KURIHARA (X)

NATURE OF PROCEEDINGS:

PLAINTIFF'S, WILLIAM TAYLOR, MOTION FOR DISCOVERY OF
PEACE OFFICER PERSONNEL AND OTHER RECORDS REGARDING
WILLIAM TAYLOR;

ABOVE PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES
TO INTERROGATORIES AND REQUEST FOR PRODUCTION;

DEFENDANT'S, CITY OF BURBANK, MOTION FOR AN ORDER
IMPOSING AN EVIDENCE SANCTION AGAINST PLAINTIFF
WILLIAM TAYLOR AND FOR MONETARY SANCTIONS OF \$6,891
AGAINST PLAINTIFF AND HIS COUNSEL CHRISTOPHER
BRIZZOLARA FOR MISUSE OF THE DISCOVERY PROCESS;

Matters are called for hearing and argued.

Pitches's motion is granted in its entirety.
Defendant's motion is granted in its entirety.

Monetary sanctions are imposed on plaintiff in the
amount of \$3,125.00, payable to the City of Burbank
within 30 days.

Defendant is to respond to discovery within 30 days.

EXHIBIT "B"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL - SECOND DISTRICT
FILED
AUG 4 2010
JOSEPH A. LAZZ
Z CLAYTON
Deputy Clerk

CITY OF BURBANK,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

WILLIAM TAYLOR,

Real Party in Interest.

B226021

(Los Angeles County
Super. Ct. No. BC422252)
(John Shepard Wiley, Jr., Judge)

NOTICE OF INTENT TO GRANT
PEREMPTORY WRIT OF MANDATE
IN THE FIRST INSTANCE

BY THE COURT:

Enforcement of the trial court order entered on July 12, 2010, in Los Angeles Superior Court Case No. BC422252 is stayed except as specified herein.

All parties to the petition are notified this court is considering the issuance of a peremptory writ of mandate in the first instance (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171), directing the respondent court to: (1) delay production of the requested personnel records pending notice by petitioner City of Burbank to the peace officers whose records are a part of Internal Affairs Investigation file numbers specified by plaintiff; and (2) conduct an in camera inspection of the subject files prior to production.

If the respondent court exercises its discretion to reconsider and modify its order and/or to conduct a new hearing on the issue as specified in *Brown, Winfield &*

Canzoneri, Inc. v. Superior Court (2010) 47 Cal.4th 1233, notice of the respondent court's order should immediately be forwarded to this court by petitioner.

In the event no changes in the order are made and/or no new hearing is scheduled, any opposition to the issuance of a peremptory writ of mandate in the first instance granting the petition may be filed on or before August 27, 2010.

Any reply must be filed on or before September 10, 2010.



EXHIBIT "C"

ORIGINAL

1 Nohemi G. Ferguson (SBN 125293)
2 Nicholle S. Mineiro (SBN 254754)
3 **GUTIERREZ, PRECIADO & HOUSE, LLP**
4 3020 East Colorado Boulevard
5 Pasadena, California 91107
6 (626) 449-2300

7 Attorneys for Defendants

REC'D
FILED
AUG 01 2009
LOS ANGELES SUPERIOR COURT
FILING WINDOW AUG 1 1 2009
JOHN A. CLARKE, CLERK
BY V. PONCE, DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10
11 ROBERT MICHAEL LYZNICK,
12 Plaintiff,

13 v.

14 COUNTY OF LOS ANGELES;
15 CHARLES DERY and DOES 1
16 through 20, inclusive,
17 Defendants.

CASE NO. BC 393936
Assigned to Hon. James R. Dunn
Dept. 26

**[PROPOSED] PROTECTIVE ORDER
RE: DOCUMENTS AND OTHER
ITEMS PRODUCED PURSUANT TO
PITCHESS MOTION**

18
19 GOOD CAUSE APPEARING THEREFORE, the Court issues this Protective Order
20 Regarding Documents and Other Items Produced Pursuant to Pitchess Motion as follows:

21 1. As used in this Protective Order, the following terms shall be defined as follows:

22 (A) "Material" shall mean any document in any form or medium whatsoever,
23 including, without limitation, any written or printed matter, any photograph, drawing, chart,
24 design or pictorial representation and any electronic, magnetic or photographic recording,
25 whether tape, film, disk, microfiche, or any other medium produced by the Court in response
26 to the Pitchess motion filed by Plaintiff in this action;

27 (B) "Person" shall mean any party or non-party to this action, whether an
28 individual, corporation, partnership, unincorporated association, governmental agency, or

1 other business or governmental entity;

2 (C) "Party" shall mean any party to this action, their respective attorneys of record,
3 and their respective agents;

4 (D) "Confidential Material" means any document, information, or other item
5 produced by the Court in response to the Pitchess motion filed in this action.

6 2. Upon the production of Confidential Material to Plaintiff and/or Plaintiff's attorneys
7 of record, the Confidential Material shall be subject to this Protective Order.

8 3. The Confidential Material produced pursuant to this Protective Order shall not be used
9 by any party for any purpose other than for the litigation, including preparation, discovery
10 proceedings, trial, and any writ or appeal, of the above-captioned case.

11 4. The Confidential Material subject to this Protective Order may only be disclosed to:

12 (A) The parties to this action;

13 (B) Counsel for the parties hereto, including their respective associates, clerks,
14 legal assistants, stenographic personnel, and firms retained by counsel to provide litigation
15 services and the employees of said firms;

16 (C) Independent expert witnesses, consultants, and other independent contractors
17 actually retained or employees by any party to consult with, advise, or assist counsel for any
18 party, or any person actually consulted or contracted by counsel for any party in connection
19 with the litigation, including preparation, discovery proceedings, trial, and any writ or appeal
20 of the above-captioned case;

21 (D) Percipient witnesses to facts, events, and/or circumstances at issue in this
22 litigation; and;

23 (E) Such other persons as hereinafter may be designated by written stipulation of
24 the parties, or by further order of the Court.

25 5. Disclosure of the Confidential Material shall be limited to the persons and/or entities
26 set forth above. Any disclosure of Confidential Material to any person will require that prior
27 to such disclosure counsel will have the person execute the form attached hereto as Exhibit
28

1 "A" setting forth the name of the person to whom the disclosure is made, and
2 acknowledgment by the person of: (a) receipt of a copy of this Protective Order; (b) the date
3 the third party received this Protective Order; (c) that the person understands this Protective
4 Order and agrees to be bound thereby; and (d) a list of the document(s) disclosed to the
5 person.

6 6. No portion of the confidential material is to be copied, quoted, cited, attached as
7 exhibits or paraphrased as part of any other document unless such document is
8 appropriately redacted to protect confidentiality or placed under seal. When possible, the
9 parties should redact extraneous and/or private matter from confidential material for
10 the purpose of facilitating the filing of the papers unsealed.

11 7. The confidential material is not to be used or referred to in any other lawsuit,
12 arbitration, or administrative proceeding, other than the instant action and the action
13 entitled *Dery v. Lyznick, et al.*, LASC Case No. BC415139.

14 8. Nothing in this Protective Order nor the production of documents under its terms
15 nor any proceeding pursuant to it shall be deemed to have the effect of an admission or
16 waiver by any party to this Protective Order or of altering the confidential or privileged
17 nature of the documents covered by this Protective Order, including the information
18 contained therein, and any summaries, copies, or other documents derived in whole or in
19 part therefrom, or altering any existing obligation of any party to this Protective Order.

20 9. If a party who received confidential material learns that, by inadvertence or
21 otherwise, it has disclosed confidential material to any person or in any circumstance not
22 authorized under this Order, the receiving party must immediately (a) notify in writing the
23 party who produced the confidential material of the unauthorized disclosures (b) use best
24 efforts to retrieve all copies of the confidential material, (c) inform the person or persons
25 to whom unauthorized disclosures were made of all the terms of this Order and (d) request
26 such person or persons to execute the Agreement that is attached hereto as Exhibit A.

1 10. Within sixty (60) days of the conclusion of this litigation and the action entitled
2 *Dery v. Lyznick, et al.*, LASC Case No. BC415139., whichever concludes later, all of the
3 confidential material in the plaintiff and his counsel's possession (including all copies
4 provided by plaintiff or his counsel to persons described in paragraph 4 (A)-(E) above) is
5 to be returned to defense counsel, with a declaration that plaintiff and plaintiff's counsel
6 have not retained any copies nor turned any copies over to third parties.

7 11. This Order shall survive the termination of this litigation and the action entitled
8 *Dery v. Lyznick, et al.*, LASC Case No. BC415139. The confidentiality obligations
9 imposed by this Order shall remain in effect until the party who designated the material as
10 confidential agrees otherwise in writing or a court order otherwise directs.

11
12 IT IS SO ORDERED

13
14 Dated: 8/11/09

15
16 By: _____

17
18 Honorable James R. Dunn
19 JUDGE OF THE SUPERIOR COURT
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28

1 Nohemi G. Ferguson (SBN 125293)
Nicholle S. Mineiro (SBN 254754)
2 **GUTIERREZ, PRECIADO & HOUSE, LLP**
3020 East Colorado Boulevard
3 Pasadena, California 91107
(626) 449-2300

4 Attorneys for Defendants
5
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
10

11 ROBERT MICHAEL LYZNICK,
12 Plaintiff,

13 v.

14 COUNTY OF LOS ANGELES;
15 CHARLES DERY and DOES 1
through 20, inclusive,
16 Defendants.
17

CASE NO. BC 393936
Assigned to Hon. James R. Dunn
Dept. 26

EXHIBIT "A" TO [PROPOSED]
PROTECTIVE ORDER RE:
DOCUMENTS AND OTHER ITEMS
PRODUCED PURSUANT TO
PITCHESS MOTION

18
19 1. I am employed by _____, I
20 hereby certify as follows:

21 2. I have read the Protective Order entered in the above-captioned action, and
22 understand its terms.

23 3. I agree to be bound by the terms of the Protective Order entered in the above-
24 captioned action. I agree to use the information provided to me only for the purposes of this
25 litigation.

26 4. I understand that my failure to abide by the terms of the Protective Order
27 entered in the above-captioned action may subject me to civil and criminal penalties for
28 contempt of Court.

1 5. I submit to the jurisdiction of the Superior Court of California, County of Los
2 Angeles, solely for the purpose of enforcing the terms of the Protective Order entered in the
3 above-captioned, and freely and knowingly waive any right that I may otherwise have to
4 object to the jurisdiction of the Court.

5 6. I make this certification on this _____ day of _____ 2009.
6
7

8 Dated:

By: _____
Signature

By: _____
Type or Print Name

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COUNTY OF LOS ANGELES

I declare that I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 3020 East Colorado Boulevard, Pasadena, California 91107.

On this date, I served the foregoing [PROPOSED] PROTECTIVE ORDER RE: DOCUMENTS AND OTHER ITEMS PRODUCED PURSUANT TO PITCHESS MOTION on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Gregory W. Smith
Smith & Lipow
9952 Santa Monica Boulevard, 1st Floor
Beverly Hills, CA 90212

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, CA 90404

Tel.: 310.282.0507
Fax: 310.286.1171

Tel.: 310.394.6447
Fax: 310.656.7701

X BY MAIL - I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Pasadena, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FEDERAL EXPRESS - I am familiar with the practice at my place of business for collection and processing of correspondence for overnight delivery maintained by Federal Express. Such correspondence will be deposited with a facility regularly maintained by Federal Express for receipt on the same day in the ordinary course of business. The envelope was sealed and placed for collection and delivery by Federal Express with delivery fees paid or provided for in accordance with ordinary business practices.

BY PERSONAL SERVICE - I caused such envelope to be delivered by hand to the offices of the addressee.

X (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 4, 2009, at Pasadena, California.

Alice M. Flores

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : August 25, 2010

DOCUMENT SERVED : **1) OPPOSITION TO DEFENDANT CITY OF
BURBANK'S REQUEST FOR A NEW HEARING ON
PLAINTIFF'S PREVIOUSLY GRANTED PITCHESS
MOTION BASED ON SUGGESTIVE PALMA NOTICE; AND
2) PLAINTIFF'S BRIEF ON THE APPROPRIATE
RESPONSE BY THIS COURT TO THE SUGGESTIVE
PALMA NOTICE; DECLARATION OF CHRISTOPHER
BRIZZOLARA**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY FEDERAL EXPRESS) I caused the aforesaid document(s) to be delivered to Federal Express either by an authorized courier of Federal Express or by delivery to an authorized Federal Express office in a pre-paid envelope for overnight delivery to the addressee(s) as shown on the Service List.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on August 25, 2010.

Selma I. Francia

SERVICE LIST

**WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510